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SUBJECT: CRIMINAL PROCEDURE REFORM PROCESS TAKES A NEW DIRECTION

REF: A) 2006 JAKARTA 13507

B) JAKARTA 157

¶1. (SBU) SUMMARY On February 21, Minister of Law and Human Rights Hamid Awaludin met with the DOJ/OPDAT Resident Legal Advisor (RLA) to discuss a more fundamental approach to revising the criminal procedure code. Awaludin expressed his belief that the current drafting efforts have been too conservative in its approach. Instead of revising the existing code, he asserted that the goal should be to establish a new code based on broadly agreed-upon general principles. Separately, the RLA met with Attorney General Saleh and his staff to update them on the progress of the criminal procedure reform. Both meetings reflect a new high-level engagement on the reform process. End Summary.

MINISTER AWALUDIN TAKES CONTROL OF THE PROCESS

¶2. (SBU) Over the course of the past seven years, an Indonesian working group that includes representatives from the Ministry of Law and Human Rights, the Attorney General's Office, and the Supreme Court has met intermittently to revise the existing 1981 Code of Civil Procedure. During that period the group proposed various revisions to the code, most notably establishing a new institution of supervising judges who would conduct judicial review of certain investigatory steps. Despite the length of time that the draft code has been under development, however, the working group's draft did not significantly depart from the 1981 Code, which itself contains many of the shortcomings inherited from the Dutch colonial period.

¶3. (SBU) In an effort to jumpstart the process, the RLA conducted two drafting sessions with the working group in December 2006 and January 2007. Both programs led to a number of significant changes to the draft code, but some of the fundamental issues, such as establishing prosecutorial and judicial control over the investigative stage, jettisoning the dossier system, reforming the rules of evidence, defining the role of the judge, and creating a truly adversarial trial remained unresolved. (Reftel A and B) At the second session, Minister Awaludin emphasized that the working group should seize this opportunity to establish new legal paradigms that reflect the dramatic political and societal changes that have taken place in Indonesia since the 1981 Code was enacted.

¶4. (SBU) On February 21, Minister Awaludin met with the RLA and two members of the working group to discuss the need to develop deeper changes to the code. Minister Awaludin expressed his belief that the working group had been too conservative in its work and indicated a lack of confidence in its leadership. Instead of revising the code, they should be writing a new one. He also expressed his view that the different justice players -- the police, the Attorney General's Office, and judges -- were too focused on their individual institutional concerns. He asked the RLA to

prepare for him a list of the fundamental values that the new code should embody and what major changes were necessary to bring them about. He then announced that he would give the working group a chance to consider these new ideas, but also bring a group of outside experts -- U.S., European, Malaysian, and domestic -- to reach agreement on the fundamentals. Then he would reach out to the different justice institutions to explain the new framework. Finally, the actual language of the code would be worked out. The Minister informed the RLA that he wanted the new code to be a "masterpiece."

15. (SBU) Based on Minister Awaludin's request, the RLA submitted a list of key principles that the new code should reflect: (1) a neutral judiciary; (2) protection of human rights; (3) checks and balances in the investigative process; (4) transparency at trial; (5) equality between the parties; (6) evaluation of all legally obtained evidence; (7) consensual resolution of cases; and (8) protection of the rights of victims. The RLA proposal detailed what broad procedural rules must be in place to achieve each of these principles.

ATTORNEY GENERAL SALEH ENGAGES

16. (SBU) On February 15, Attorney General Saleh requested that the RLA give a presentation on the status of the criminal procedure code. In addition to the Attorney General, approximately twenty of the AGO senior leadership attended the ninety minute meeting. Following the RLA's overview of the changes currently contained in the draft code, the Attorney General and his staff asked questions. The questions of his staff indicated that the AGO's two primary concerns were whether the supervising judge would impinge on their prosecutorial control and whether the new code would restore their control over the police during the investigative stage.

COMMENT

17. (SBU) Over the past two months, the working group has been receptive to significant improvements to the code. However, several of the proposals from the U.S. legal experts would have necessitated fundamental changes to the existing system, something the working group was not yet ready to undertake. Minister Awaludin's new direction in the drafting process opens the door to more fundamental revisions to the code that could allow the Indonesian criminal justice system to move from a formalistic inquisitorial system to a more adversarial, evidence-based system. The meeting at the AGO showed an encouraging recognition by the Attorney General of the importance of this process, but questions from many of his staff confirmed Minister Awaludin's concerns that justice players were preoccupied with their institutional interests rather than focused on the broader issues. End Comment.

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